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LETTER FROM  
HON. DANIEL AGNEW,  
ON THE  
ASSUMPTION BY THE COMMONWEALTH  
OF THE  
RIOT LOSSES.

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BEAVER, March 5th, 1879.

*My Dear Sir :*

Our interview was so short and interrupted, I am not sure I grasped all the objections you stated as urged against the relief of Allegheny county from the riot losses of 1877.

All touching the right, justice, policy and the prohibitions of the new Constitution, we fully stated and met in our recent address. You say a question of *general* power to appropriate money for such losses is raised. On this point, there is no difficulty, the interpretation of the State Constitution, and the practice under it being uniform and consistent. Its interpretation differs from that of the Constitution of the United States. The latter conveys only the powers specifically granted or necessarily implied therefrom—the former all the power of the people not expressly withheld. See the cases in 9 *Harris* 160, 161; 7 *Harris* 260; 5 *Harris* 119; 2 *P. F. Smith* 477; *Cooley's Constitutional Limitations* 87.

Therefore, unless some distinct prohibition can be found in the Constitution of the State, the power to appropriate money to payment of these losses exists beyond all question.

The practice of the State is in entire accord. This will be remembered in many things too numerous to be mentioned. Illustrations may be seen in gratuities to widows of soldiers, scouts and spies, bounties to volunteers, contributions to agricultural societies, rewards for arrests of felons, for destruction of noxious animals, appropriations to great fires (Pittsburgh in 1845), losses by invasion, great inundations, paintings, portraits of generals, battle of Gettysburg, histories, memorials, funerals, celebrations! even *pageants* have had no shadow cast upon them—the reception of Lafayette, the last inauguration for Governor, costing a large sum.

Coming to the case of the County, the want of power in the State to charge herself, and yet having power to charge a single municipality is illogical and unsound. If the State cannot constitutionally charge herself with these losses—if she cannot charge all her citizens and all her territory, she cannot charge a special number or a part. *Omne majus continet in se minus*. The whole is equal to all its parts. Philadelphia and Allegheny are merely municipal divisions for convenient purposes, but are a part and inseparable from the whole, in a question of *power*. If herself constitutionally disabled, her municipal divisions are also exempt.

Nor has the question any analogy to the mooted one as to losses by war, external or internal. War involves the acts of enemies, which require often all the men and means of a State or nation to resist, and may involve losses beyond her ability to repair. Indeed she herself may be overcome, subjecting her to the law of conquest,



and bringing her citizens under a new dominion. The losses by war are peculiar, and may engulf a whole State. But no such difficulty attends losses caused by internal commotions, within her own circle of power and control.

Another principle distinguishes losses by war, in the case of a State forming one of a confederation or union of States, where her most important defensive powers are lost or impaired by her grant of them to the central government. For example, among the grants of power to the United States we find these—to declare war, raise and support armies, provide and maintain a navy, make rules for the government and regulation of the land and naval forces, to call forth the militia to repel invasion, suppress insurrection, and protect the State from domestic violence. The State power of defence being so largely impaired she cannot exert that force which she might use in war, as an independent government, for her own protection. This point is forcibly illustrated by the invasions of rebel troops, when the central government took to herself, the very force, (the Reserves), the State had raised for her own defence. Hence, compensation for such losses by war must be the duty, if at all, of the stronger and not of the weaker government.

But when we come to matters of internal economy or control, a very different question arises, and the duty of the State, or of the “sovereign” in the language of Vattel, depends on the true end and purpose of civil government.

This most approved author remarks (p. 5, § 16): “In the act of association by virtue of which a multitude of men form together a State or nation, each individual has entered into engagements with all, to promote the general welfare; and all have entered into engagements with each individual, to facilitate for him the means of supplying his necessities and to protect and defend him.” Thus State duty is so blended, that it embraces the general welfare of all and every one.

Again he says (p. 33, § 72): “A wise conductor of the State will find in the objects of civil society the general rule and indication of his duties. The society is established with the view of procuring to those, who are its members, the necessities, conveniences, and even pleasures of life, and in general, everything necessary to their happiness.”

And again (p. 47, § 110): “The desire of happiness is the powerful spring that puts men in motion; felicity is the end they all have in view, and it ought to be the grand object of the public will. It is then the duty of those who form this public will, or of those who represent it—the rulers of the nation—to labor for

the happiness of the people, to watch continually over it, and to promote it to the utmost of their power."

These being the great ends and purposes of civil government, it is obvious that equality in the creation and distribution of comforts and burthens, and the pleasures and inconveniences of life, among the people, is the only just rule which a benign government should aim to enforce. Hence the burthens of misfortune, accidents or the ills produced by others, should be equalized among the entire citizenship, as fairly as possible. This duty demands that a great and extraordinary loss, such as that of 1877, should be distributed among all the population, and not be borne by a few, the greatest part of whom are as innocent and guiltless as the rest.

In such a case it is evident there can be no issue to be decided between the State and the County—between the whole people and this part of them. It is not a question of *obligation* to be settled between them. The reason is obvious. They stand in dissimilar attitudes. No obligation rests on the county, except in a *legal* or compulsory sense. But upon the State there is no compulsion, she has incurred no legal or binding obligation. Whatever she does she must do voluntarily, and her will can be influenced only by considerations of equity, conscience and governmental duty. Now, this is the very ground on which the case is placed in our recent address.

Consequently it is clear that it is not an issue or dispute upon a question of *liability*, and that the fact of the intervention of the State before or after the destruction of the property by the rioters, is not the hinge or pivot of the case. Her ill advised interference *before*, may add the weight of her *own fault* to the strength of the conscientious *duty*, but does not change the nature of her so-called obligation. It is still a matter for her own judgment. Conceding the fact of prior intervention to be decided against her, it imposes no *legal* obligation upon her, while, if decided against the county, it does not detract from the duty of the State to diffuse this extraordinary loss, instead of permitting it to ruin a portion of her people. The question still comes back to her, does this loss demand that she repair it and thereby equalize the burthen, preserve general welfare and promote the happiness of all her people. Says Burlamaqui (Natural and Politic Law, 2 Vol. p. 103, § 23): "There is a general rule which includes all the duties of a sovereign, and by which he may easily judge how to proceed under every circumstance. Let the safety of the people be the supreme law." Now as we have seen that the *moral* duty of the State, and the *legal* of the county, are of different natures, there can be no dispute or issue



to determine the question between them. The course of the State is one of simple conscience, honor and equity. The question for the county is *legal* liability or not, and this the judicial department of the government only can decide. Hence the criticism is wholly groundless, which you say has been passed upon our address, that in one breath we deny the liability of the county, and in the next, ask the State to relieve her. It is ingenious hostility, not fair criticism, for as the only liability of the county can be legal, it must be determined by the Courts *hereafter*; while the State must act *now* on the different ground of moral duty, to prevent injustice, distress, useless litigation, strife, expense and gross inequality. Her question is, not is the county legally liable, but is it right, wise, just and proper, to distribute this great loss among all, instead of letting it fall in ruinous exaction on a portion only. But we do deny the legal liability of the County, emphatically. We say that the law is invalid, not as unconstitutional when passed, but that it *fell* on the adoption of the new Constitution, and was not preserved by the second section of the schedule, or any other part. It not only offends the spirit and intent of the Constitution, but conflicts specifically with several provisions.

There is no argument, no assertion however confident, which can wrest the question from the ground on which we placed it in our address. It is one of simple duty of the State to her own people, and the general welfare. If she decide through her Legislature that no duty exists in conscience and right, she leaves the question to the Courts with all the ruinous consequences, whether to the County or to the owners of the property, which must follow.

Yours Truly, &c.,

GEO. SHIRAS, JR., ESQ.,  
*Pittsburgh, Pa.*

DANIEL AGNEW.

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HON J. M. GAZZAM.

*Dear Sir* :—The foregoing letter of Judge Agnew is so well calculated to create intelligent public opinion on the subject of the riot losses, that I deem no apology necessary for having had it printed for circulation.

Respectfully Yours,

GEORGE SHIRAS, JR.

396-8-100





